

SALES AND PURCHASE AGREEMENT

THIS SALES AND PURCHASE AGREEMENT ("the Agreement") is made and entered into by and between THE CITY OF MESQUITE, NEVADA, a political subdivision of the State of Nevada ("City"), and _____, ("Offeror"), collectively referred to as "the Parties," and will become legally effective when signed and dated by the Parties below.

WITNESSETH:

WHEREAS, City owns that certain parcel of real estate consisting of approximately _____ () gross acre ("the Subject Property") located on Lot _____, within the Mesquite Commerce & Technology Center ("the Center"), in the City of Mesquite, County of Clark, State of Nevada, and more particularly described on EXHIBIT "A" attached hereto and made a part hereof ("the Subject Property"); and

WHEREAS, Offeror desires to purchase the Subject Property from City and has made an unsolicited offer to purchase the Subject Property; and

WHEREAS, subject to compliance with all requirements of law or policy, City is willing to sell the Subject Property to Offeror, upon the terms and conditions of this Agreement; and

WHEREAS, Offeror has agreed and promised to construct and operate a _____ to _____ square feet manufacturing/warehouse facility on the Subject Property (the "Offeror facility"), with a work force of between _____ () and _____ () employees and a wage of no less than \$_____ per hour and varying from \$_____ per hour to _____ per hour (excluding upper management) and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the following mutual promises, covenants and agreements hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. **AGREEMENT TO SELL REAL PROPERTY** Subject to the terms and conditions hereof, as of the Closing (as defined in Section 3 hereof), City agrees to sell to Offeror, and Offeror agrees to purchase from City, the Subject Property, together with all rights, benefits, privileges and appurtenances pertaining thereto. Offeror offers to purchase the Subject Property for a price of _____ (\$_____) per acre, plus grading costs. The total price of the _____ acres is _____ (\$_____) plus grading costs. Offeror will open an Escrow in the City of Mesquite and deposit an Earnest Money Deposit of _____ (\$_____) no later than ten (10) days after execution of this Agreement by the Parties. The Earnest Money Deposit will be applied to the Purchase Price at the Closing. The City will return ninety percent (90%) of the Earnest Money Deposit to Offeror if Offeror terminates this agreement not later than ten (10) days after the beginning of escrow. However, the City will retain ten percent (10%) to cover costs associated with the unsolicited bid. In the event Offeror terminates this Agreement later than ten (10) days after the beginning of escrow, for any reason, the Parties agree it would be difficult to determine the damages incurred by the City in such event. Accordingly, the Parties agree that the

performed by City. City has duly obtained all necessary or appropriate consents, authorizations or approvals required in connection with the execution, delivery and performance by City of this Agreement and the other documents and instruments referred to herein. This Agreement and all agreements to which City will become a party pursuant hereto are and will constitute the valid and legally binding obligations of City and are and will be enforceable against City in accordance with the respective terms hereof or thereof;

(b) City has, and at the Closing will have, good and marketable, fee simple title to the Property, free and clear of all liens, charges, mortgages and encumbrances of every nature, kind or character whatsoever, except for such easements, restrictions and encumbrances of record that have been approved by Offeror in its sole discretion and none of which adversely affect the marketability of the Property or Offeror's intended use thereof as manufacturing facility and other related uses;

(c) To the knowledge of City, there is no condemnation or similar proceeding that is pending or threatened against the Property or any part thereof, nor are there any governmental plans to appropriate or purchase the Property or any part thereof;

(d) No person or entity is or shall be at the time of the Closing in possession or entitled to be in possession of the Property or any part thereof;

(e) The Property is presently zoned "Light Industrial" (L.R);

(f) The sale of the Property to Offeror pursuant to this Agreement will not violate any applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement binding upon or otherwise applicable to City and/or the Property;

(g) City has not other than as shown on the Final Map of the subdivision, granted and/or entered into any commitments or other agreements, including, without limitation, any right of first refusal or option to purchase, with or in favor of any third party, which would or could prevent City from consummating the lease of the Property to Offeror pursuant to the Lease or which would bind Offeror subsequent to the consummation of the lease of the Property by Offeror;

(h) The Property has graded access to begin construction;

(i) All utilities necessary for Offeror's intended use of the Property as a _____ facility and other related uses, including, without limitation, electricity, water, sewer, and telephone, will be available in the abutting street. All connection and related impact fees are the responsibility of and will be paid by Offeror;

(j) To the best of City's knowledge, (i) there are no toxic or hazardous substances or wastes disposed of, stored or present on, in or under the Property, nor have any such substances or wastes from the Property been sent by City for storage, treatment, reuse or recycling, or disposal to any other sites prior to the date hereof; (ii) there are no releases or threats of releases of any toxic or hazardous substances or wastes to the environment from or at the Property, including, without limitation, any migration or any release or threatened release of such substances or wastes from one environmental medium to another environmental medium; (iii) no conditions exist on the Property which would necessitate remedial action by it under any Environmental Law; and (iv) no liens have

as the proposed transferee has resources comparable to Offeror and so long as Offeror guarantees the performance of the transferee subsidiary or affiliate in the event of any default of an obligation to the City by the transferee subsidiary or affiliate;

(c) If Offeror leases, sells, or assigns its interest in the Subject Property, or any portion thereof, with City advance written approval, within _____ years of Offeror commencing its business operations, as evidenced by the Certificate of Occupancy issued by the City for the facility, Offeror will have the Subject Property appraised at that time. Offeror agrees to then pay the City the difference between what it paid for the Property at the Closing and the sales price of the Property, excluding improvements made by Offeror within the _____ year period;

(d) The provisions contained in Subsections (b), (c) & (d) noted above will be made part of the Deed issued to Offeror by the City and Offeror agrees to place those same provisions in any successor, deed, lease or conveyance of the Property within the _____ year period after the commencement of Offeror's business operations as evidenced by a Certificate of Occupancy issued by the City for the project; and

(e) The minimum wage paid by Offeror for operations at the facility will be \$ _____ per hour, including benefits, and average wage will be _____ per hour excluding officers.

7. CONTINGENCIES.

7.1 Offeror's Contingencies. Offeror's obligation to purchase the Property pursuant to this Agreement is expressly made subject to the following conditions precedent (all of which are for the sole benefit of Offeror and not of City) ("Offeror's Contingencies"), which conditions must have either been satisfied or expressly waived in writing by Offeror on or before the Closing:

(a) Offeror shall obtain, at Offeror's sole cost and expense, a marked title commitment or pro forma title policy containing the express commitment of the Title Company to issue an ALTA Form Title Policy to Offeror, in the amount of \$ _____, insuring good and marketable title to the Property;

(b) Offeror shall obtain an ALTA Survey of the Property (the "Survey"), at Offeror's sole cost and expense, and the Survey shall be satisfactory to Offeror in its sole discretion;

(c) Offeror shall obtain the results of any other studies, inspections or tests that Offeror deems reasonable necessary to confirm that the Property is suitable for Offeror's intended use of the Property which results shall be satisfactory to Offeror in its sole discretion;

(d) Offeror shall verify to its complete satisfaction that all necessary utilities, water rights, and fire and police protection are or will be available for Offeror's intended use of the Property as an Offeror facility and other related uses; and

(e) No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated, and no governmental agency or body shall have taken any other action or made any request of any

If to City: The City of Mesquite, Nevada
10 East Mesquite Blvd.
Mesquite, Nevada 89027
Attention: City Manager

With simultaneous copy to: The City of Mesquite, Nevada
10 East Mesquite Blvd.
Mesquite, Nevada 89027
Attention: City Attorney

If to Offeror:

Either party hereto may from time to time designate in writing any other address to which notices shall be delivered. All notices hereunder shall be deemed given when (i) personally delivered, (ii) one (1)-business day after having been delivered to an overnight courier, or (iii) three (3) business days after having been deposited in the United States mails in accordance with the foregoing.

9.2 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as the requesting party may deem necessary to effectuate this Agreement.

9.3 Legal Fees and Costs. In the event a party elects to incur legal expenses to enforce or interpret any provision of this Agreement by judicial proceedings, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs, and necessary disbursements.

9.4 Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

9.5 Benefit. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns.

9.6 Assignment. Neither party may assign this Agreement without the prior written consent of the other party.

9.7 Waiver of Breach. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof.

9.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this

EXHIBIT "B"

Bill Number 270
Ordinance Number 270

AN ORDINANCE AMENDING TITLE 9 OF THE MESQUITE MUNICIPAL CODE; ESTABLISHING A NEW CHAPTER 13 THERETO; REQUIRING AN ENVIRONMENTAL DEVELOPMENT PLAN FOR LAND DEVELOPED WITHIN THE BOUNDARIES OF THE 1996 MESQUITE LAND ACT AND THE 1999 MESQUITE LAND ACT ("THE SUBJECT PROPERTY"); ADOPTING AN AMENDMENT TO THE CLARK COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN ("CCMSHCP") OR, ALTERNATIVELY, ADOPTING A NEW HABITAT CONSERVATION PLAN ("HCP") REGARDING FEDERALLY LISTED SPECIES IN AND AROUND THE VIRGIN RIVER NOT CURRENTLY COVERED BY THE CCMSHCP; REQUIREMENT THAT DEVELOPERS OF LAND WITHIN THE SUBJECT PROPERTY COMPLY WITH ALL CODES, COVENANTS AND RESTRICTIONS WHICH ATTEMPT TO AVOID, MINIMIZE AND MITIGATE ADVERSE AFFECTS OF DEVELOPMENT WITHIN THE SUBJECT PROPERTY ON THE VIRGIN RIVER SYSTEM; AGREEMENT BY THE CITY OF MESQUITE TO ASSIST THE UNITED STATES FISH & WILDLIFE SERVICE IN PROTECTING FEDERALLY LISTED SPECIES IN AND AROUND THE VIRGIN RIVER NOT CURRENTLY COVERED BY THE CCMSHCP, SUBJECT TO THE AVAILABILITY OF FUNDS APPLIED FOR AND/OR RECEIVED BY THE CITY SPECIFICALLY FOR THE PURPOSES OF THIS ORDINANCE; IMPOSING APPLICABLE REQUIREMENTS OF THE CCMSHCP (OR HCP) REGARDING THE ISSUANCE OF GRADING OR BUILDING PERMITS WITHIN THE SUBJECT PROPERTY; AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, the City of Mesquite ("City") is in the process of obtaining certain acreage from the United States Bureau of Land Management pursuant to the 1996 Mesquite Land Act and the 1999 Mesquite Land Act ("the Subject Property"); and

WHEREAS, the United States Fish & Wildlife Service ("FWS") has responsibilities imposed on it by virtue of the Endangered Species Act of 1973, as amended ("ESA") and is concerned with the potential direct and indirect effects of development of the Subject Property on species it is required to protect; and

WHEREAS, the FWS is concerned the development of the Subject Property may jeopardize the continued existence of the Virgin River chub (*Gila seminuda*) and woundfin minnow (*Plagopterus argentissimus*), both of which are federally listed as endangered species, or result in adverse modification of their designated critical habitats; and

WHEREAS, if the City of Mesquite's application to amend the CCMSHCP is denied then, in that event, the City of Mesquite would assist the FWS in fulfilling its legal responsibilities under the ESA as to the Virgin River Species identified above in the pursuit of the adoption of a HCP for the Subject Property under issuance criteria outlined in Section 10 of the ESA which will, in that event, provide that:

- a. Any taking of Virgin River Species in and around the Virgin River must be incidental to otherwise lawful activities;
- b. All persons or parties developing land within the Subject Property, to the maximum extent practicable, minimize and mitigate the impacts of such taking on the Virgin River Species;
- c. The City will apply for available funding in order to permit its compliance with the requirements of the HCP as to the Virgin River Species.
- d. The taking will not appreciably reduce the likelihood of the survival and recovery of the Virgin River Species in the wild; and
- e. Other measures specified by the HCP as being necessary so the purposes of the HCP will be addressed as to the Virgin River Species, subject to adequate federal or other funding to accomplish those measures; and

WHEREAS, the City of Mesquite is not required to provide any taxes, resources, funding or revenues received or held by the City of Mesquite that were not received for the specific purpose of complying with the purposes of this Ordinance as to the Virgin River Species; and

WHEREAS, the City will seek available funding to satisfy the purposes of this Ordinance as to the Virgin River Species and will utilize those funds when received exclusively to address the purposes of this Ordinance as to the Virgin River Species; and

WHEREAS, several options are available for obtaining Section 10 permit coverage for the Subject Property as to the Virgin River Species, including, but not limited to, amending the existing Section 10 permit held by Clark County, Nevada and its incorporated cities, or developing an individual HCP for the Subject Property, and that selecting the former rather than the later option will likely increase flexibility and streamline the permitting process; and

WHEREAS, given that adverse effects from development of the Subject Property may occur to the Virgin River Species both during its development and occupancy and that there should be mechanisms in place to deal with such effects if and when they occur; and

WHEREAS, it is necessary and appropriate to amend the Mesquite Municipal Code from time-to-time.

NOW THEREFORE, THE MESQUITE CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

- D. The developer of any land within the Subject Property will comply with all applicable requirements of the Clark County Multiple Species Habitat Conservation Plan ("CCMSHCP") or, alternatively, with all applicable requirements of a Habitat Conservation Plan ("HCP"), in cooperation with and approved by the FWS as being necessary for the purposes of protection of the Virgin River Species.

9-13-3: AMENDMENT OF CURRENT HABITAT CONSERVATION PLAN OR, ALTERNATIVELY, ADOPTION OF NEW HABITAT CONSERVATION PLAN FOR THE SUBJECT PROPERTY: Within ninety (90) days of the City obtaining title to the Subject Property, the City will pursue an amendment of the current CCMSHCP to add the Virgin River Species or, alternatively, if an amendment of the CCMSHCP is denied as to the Virgin River Species, the City will assist the FWS under the ESA to protect the Virgin River Species in the pursuit of a HCP for the Subject Property under issuance criteria outlined in Section 10 of the ESA to cover the Virgin River Species.

9-13-4: REQUIREMENT OF COMPLIANCE WITH CODES, COVENANTS AND RESTRICTIONS IN THE SUBJECT PROPERTY: When developed and occupied, residents within the Subject Property are required to adhere to all applicable codes, covenants and restrictions imposed by the developer and/or the City and the CCMSHCP (or HCP) to avoid, minimize and mitigate the adverse affects of development within the Subject Property on the Virgin River Species.

9-13-5: AGREEMENT BY CITY OF MESQUITE TO ASSIST FWS IN PROTECTING ENDANGERED SPECIES IN AND AROUND THE VIRGIN RIVER SUBJECT TO AVAILABILITY OF FEDERAL OR OTHER FUNDING: The City of Mesquite will carry out its legal responsibilities under Section 10 of the Endangered Species Act and will, accordingly, assist the FWS in the recovery of the Virgin River Species in and around the Virgin River, subject to the availability of adequate federal or other non-City funding to accomplish such assistance. In furtherance of its pledge of assistance to FWS, the City agrees to:

- A. Seek the designation for use of the sale proceeds set forth in the Technical Amendment to the Mesquite Lands Act 2001 for recovery of the Virgin River Species set forth herein affecting the Virgin River within the State of Nevada through and adjacent to the corporate limits of the City of Mesquite as it now exists and as it will exist in the future;
- B. Seek proceeds of any applicable fees associated with development of the Subject Property payable under the CCMSHCP for the EDP; and
- C. Pursue other available funds for accomplishing the purposes of this ordinance including, but not limited to, funds available within the CCMSHCP process.

9-13-6: CONDITIONS ASSOCIATED WITH THE ISSUANCE OF GRADING OR BUILDING PERMITS IN THE SUBJECT PROPERTY; CITY'S PARTICIPATION OIN HYDROLOGIC MONITORING AND MITIGATION PLAN: City-issued permits to grade or build a building within the Subject Property must include

EXHIBIT "C"

ENVIRONMENTAL DEVELOPMENT PLAN

[NAME OF DEVELOPER]

CITY OF MESQUITE, NEVADA

As prescribed in City of Mesquite Ordinance Number 270, all development within the lands acquired by the City of Mesquite ("City") under the 1996 Mesquite Land Act and the 1999 Mesquite Land Act, ("the Subject Property") shall be done in accordance with an Environmental Development Plan ("EDP") entered into by and between the Developer of any portion of the Subject Property and the City. This EDP sets forth measures and practices to be employed by Developer (as development and construction proceed) to insure, to the maximum extent practicable, that affects of construction on any portion of the Subject Property has been considered and that Developer will minimize the affects of such activities on the Virgin River Species.

NOW, THEREFORE, in consideration of the foregoing premises and the following terms and conditions, the Parties hereto agree as follows:

[Name of Developer] ("Developer"), the owner of the portion of the Subject Property set forth on Exhibit "A", agrees to the following conditions for the work to be done under a grading permit issued by City and the subsequent development and construction of improvements on its portion of the Subject Property:

1. Developer will comply with all applicable requirements of the Clark County Multiple Species Habitat Conservation Plan, or, alternatively when available, with all applicable requirements of a Habit Conservation Plan in cooperation with, and approved by, the U.S. Fish & Wildlife Service.
2. Developer will comply with all requirements of the City of Mesquite Ordinance Number 270.
3. Best Management Practices will be utilized to prevent or minimize non-point source pollution and soil loss and sedimentation in natural drainage areas, including:
 - a. locating waste and excess excavated materials outside of drainages to avoid sedimentation;
 - b. installation of silt fences, temporary earthen berms, temporary water bars, sediment traps, stone check dams, or other equivalent measures (installing erosion-control measures around the perimeter of stockpiled fill material) prior to construction;
 - c. siting of equipment and material staging areas, as well as vehicle parking areas in upland areas, a sufficient distance from drainages conducting regular site inspections during the construction period to ensure that erosion control measures were properly installed and are functioning effectively; storing, using and disposing of chemicals, fuels and other toxic materials in a proper manner;

[NAME OF DEVELOPER]

By: _____

DATED:

EXHIBIT "A"

[Legal description of the subject property.]